

STATE OF NEW YORK  
STATE TAX COMMISSION

*Califano, Richard*  
*1970*

In the Matter of the Petition

of

RICHARD CALIFANO and LUCY CALIFANO:

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income & UBT :  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the (Year(s) 1960, 1962, :  
and 1963

State of New York  
County of Albany

Margaret Wood , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 26th day of March , 1970 , she served the within  
Notice of ~~Decision~~ (or Determination) by (certified) mail upon Arthur E.

Coughlan (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Arthur E. Coughlan  
2900 Hempstead Turnpike  
Suite 213  
Levittown, New York 11756 .  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

26th day of March , 1970.

*Marie Buckley*

*Margaret Wood*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD CALIFANO and LUCY CALIFANO

For a Redetermination of a Deficiency or  
a Refund of Personal Income & UBT  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the (Year(s) 1960, 1962,  
and 1963

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Margaret Wood, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 26th day of March, 1970, she served the within  
Notice of ~~Decision~~ (or Determination) by (certified) mail, upon Richard &

Lucy Califano (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Richard Califano  
24 Marksman Lane  
Levittown, New York 11756

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~  
~~the~~) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (~~representative of the~~) petitioner.

Sworn to before me this

26th day of March, 1970

Maria Buckley

Margaret Wood

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
Richard Califano and Lucy Califano	:	
For a Redetermination of a Deficiency	:	DECISION
or for a Refund of Personal Income	:	ON
Taxes and Unincorporated Business Taxes	:	DEFAULT
Under Articles 22 and 23 of the Tax	:	
Law for the years 1960, 1962, and 1963.	:	

The petitioners having filed a petition for a redetermination of notices of deficiency or for a refund of personal income taxes and unincorporated business taxes under Articles 22 and 23 of the Tax Law, for the years 1960, 1962, and 1963, and a hearing having been duly scheduled at the offices of the Department of Taxation and Finance at 80 Centre Street, New York, New York, on January 5, 1970, before Francis X. Boylan, Esq., and there having been no appearance on behalf of the petitioners, and the Department having appeared by E. H. Best, Counsel, (Alexander Weiss, Esq. of counsel), and the record having been duly examined and considered, the State Tax Commission finds that:

1. The failure of any appearance on behalf of the petitioner at the scheduled hearing constituted a default.
  2. By a notice of deficiency, dated February 28, 1966, and an attached statement of audit changes, the State Tax Commission notified petitioner that it determined that there was a deficiency of unincorporated business taxes for the years 1960 and 1962 in the amounts of \$214.05 and \$92.27 together as of the date of the said notice.
- By another notice of deficiency, dated February 28, 1966, and an attached statement of audit changes, the State Tax Commission notified petitioners that it determined that there was a deficiency

of unincorporated business taxes for the year 1963 in the amount of \$356.00 with a penalty of \$89.15 additionally.

3. The evidence indicates that the income assertedly constituting unincorporated business income was from commissions earned by the petitioner, Richard Califano, as a real estate salesman employed by one John W. Pergola, a real estate broker. Petitioner did not make any sales on his own account.

Accordingly, the State Tax Commission hereby

DECIDES:

A. That the determination that petitioner's earnings from commissions as a real estate salesman, rendering services for a single broker in the stated circumstances, was subject to unincorporated business taxes, was erroneous in law, and is rescinded (T.L. §703(a) and (f)).

A real estate salesman working for a broker (or incorporated real estate sales agency) under the degree of supervision that normally exists typically in that relationship is not conducting an unincorporated business but is an employee for the purposes of the Unincorporated Business Tax Law, it is held, notwithstanding whether such persons are ruled to be not employees but independent contractors under other statutes.

The circumstance that petitioner reportedly paid a portion of the related commissions to his son, who evidently was not himself a licensed salesman, for driving customers to the sites of real property up for sale, which was not formally a sales activity, did not constitute the son "staff" of his father, the petitioner, or adequately evidence that petitioner's activities were different from those of staff real estate salesmen generally, who normally are employees for unincorporated business tax law purposes, it is held.

The fact that petitioner himself held a broker's license was not material in the circumstances here, where he did not make any sales as a broker in his own right.

B. The assessments of unincorporated business taxes made for the years 1960, 1962, and 1963, are, therefore, cancelled in full.

DATED: Albany, New York

STATE TAX COMMISSION

March 24, 1970.

Norman Gallivan  
PRESIDENT

W. Bruce Krawley  
COMMISSIONER

Milton Koerner  
COMMISSIONER

Mr. Richard C. Califano,  
24 Wksman Lane,  
Albany, N. Y. 11756



State of New York  
Dept't of Taxation & Finance,  
State Campus,  
Albany, N. Y. 1226

Att: Francis X. Boylan, Esq.

Richard C. Califano,  
24 Marksman Lane,  
Levittown, N. Y.

Dec. 8, 1969

State of New York,  
Dep't of Taxation & Finance,  
State Campus,  
Albany, N. Y.

(State Tax Commission)  
(Richard Califano)

ATT: Francis X. Boylan  
Hearing Officer

Dear Mr. Boylan:

Received your notice of "Formal Hearing", to be held January 5, 1970 at 1:30 PM, 80 Center Street, New York City, in reference to the above captioned and will make every effort to be there personally, although I will not have any legal representation. In the event that by some unforeseen occurrence, I will not be able to attend, I would like to submit the following information, which is my complete case in fact, and rely upon the judgement of the hearing officer accordingly. In any event I would like a decision rendered.

(1) Copy of my employers statement which is self explanatory.

(2) In 1964 when my accountant was David J. Grutman, of 3000 Hempstead Turnpike, Levittown, I became interested in H.R.10, commonly known as "Keogh Plan", I asked Mr. Grutman to contact the Mineola Office of the IRS to determine my eligibility under this plan. He told me after contacting Mineola, that they have informed him that I was not in business for myself, that I was in the employ of John W. Pergola and therefore that I was not eligible. This was all done by phone with nothing in writing.

It seems to me though, that if the IRS considered me an employer and not in business for myself, why should the State Tax Commission consider me in business for myself and therefore subject to unincorporated business tax.

(3) According to the New York State Real Estate License law, the "licensed real estate broker" must post this fact outside a place from which he is doing business. In the years under consideration, a sign "Licensed Real Estate Broker" was attached to my home, which of course, lead to some neighborhood business, which I readily admit, but my belief was that I was conforming to the State License Law in doing this.

At an inspection by the License Bureau at Pergola's office, I was informed, as was my employer, that this sign must be hung at my employer's place of business, since this was also considered my place of business. This event did not occur until some time in 1964.

Because of the foregoing confusion of rules and laws and provisions, it was then thought by my new accountant, Mr. Arthur Coughlin of 2900 Hempstead

Turnpike, Levittown, that a petition should be made for a refund of unincorporated business tax for the years paid, plus a denial of any additional payment.

You now have the complete case in hand-- do what you can with it. As far as I am concerned, I would be acceptable to a settlement which would not cost me any money, but I will abide by your decision in any event, needless to say.

Sincerely yours

*Arthur J. Coley*

Enc: 1



JOHN W.  
**Pergola**

3475 Hempstead Turnpike  
Levittown, L. I., N. Y.

PERSHING 5-4636

September 8, 1966

TO WHOM IT MAY CONCERN:

This is to state that Richard C. Califano has been employed by me as a commission Real Estate salesman since March 1959 to the present date.

To the best of my knowledge, even though Mr. Califano is a licensed Real Estate Broker he has never acted in his own capacity as such while in my employment.

Mr. Califano performed his personal services in my office solely maintained and staffed by me and he was accountable to me as to his method of conducting business and the results obtained therefrom.

  
John W. Pergola